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7/5357-2

Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAREPORTAL, INC. D/B/A CHEAPOAIR,

Plaintiff,

v.

OPINION CORP. D/B/A PISSEDCONSUMER,

Defendant.

Civil Action No. 08 CV 05964 (DLC)

**ANSWER TO FIRST AMENDED
COMPLAINT**

Defendant Opinion Corp., by its attorneys, Anna Vishev, and Ostrolenk, Faber, Gerb & Soffen LLP answer the first amended complaint ("Complaint") in the civil action as follows:

Preliminary Statement

In answer to the unnumbered Preliminary Statement of the Complaint, Defendant admits that Fareportal, Inc. ("Plaintiff") brought this action alleging trademark infringement under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. §1051 *et seq.*), but denies any remaining allegations therein.

The Parties

1. In answer to paragraph 1 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

2. In answer to paragraph 2 of the Complaint, Defendant admits that Opinion Corp. is a corporation organized under the laws of the State of New York and has an office and place of business in Brooklyn, New York. Defendant denies any remaining allegations therein.

3. In answer to paragraph 3 of the Complaint, Defendant denies the allegations therein and particularly denies Plaintiff's claim to a registered trademark in the slogan "cheapOair.com the only way to go", as alleged by Plaintiff in the Complaint.

4. In answer to paragraph 4 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

5. In answer to paragraph 5 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

6. In answer to paragraph 6 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

7. In answer to paragraph 7 of the Complaint, Defendant admits that Defendant maintains the website www.pissedconsumer.com. Defendant denies any remaining allegations therein.

Nature of Action

8. In answer to paragraph 8 of the Complaint, Defendant admits that this action was brought for alleged trademark infringement under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. §1051 *et seq.*), in violation of 15 U.S.C. §1114(1)(a), 1125(a)(1)(A) and (B), 15 U.S.C. §1125(c) and 15 U.S.C. §1125(d)(1), and unfair trade practices under New York General Business Law §§133 and 360-1, and common law unfair competition. Defendant denies any remaining allegations therein.

9. In answer to paragraph 9 of the Complaint, Defendant denies the allegations therein.

Jurisdiction and Venue

10. In answer to paragraph 10 of the Complaint, Defendant admits the jurisdiction of this Court and admits to the Statutes, but denies any remaining allegations therein.

11. In answer to paragraph 11 of the Complaint, Defendant admits to the proper venue in this District, but denies any remaining allegations therein.

Plaintiff's First Alleged Cause of Action

12. In answer to paragraph 12 of the Complaint, Defendant denies the allegations therein.
13. In answer to paragraph 13 of the Complaint, Defendant denies the allegations therein.
14. In answer to paragraph 14 of the Complaint, Defendant denies the allegations therein.
15. In answer to paragraph 15 of the Complaint, Defendant denies the allegations therein.
16. In answer to paragraph 16 of the Complaint, Defendant denies the allegations therein.
17. In answer to paragraph 17 of the Complaint, Defendant denies the allegations therein.
18. In answer to paragraph 18 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Second Alleged Cause of Action

19. In answer to paragraph 19 of the Complaint, Defendant repeats and realleges the preceding paragraphs as if fully set forth herein.
20. In answer to paragraph 20 of the Complaint, Defendant denies the allegations therein.
21. In answer to paragraph 21 of the Complaint, Defendant denies the allegations therein.
22. In answer to paragraph 22 of the Complaint, Defendant denies the allegations therein.
23. In answer to paragraph 23 of the Complaint, Defendant denies the allegations therein.
24. In answer to paragraph 24 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Third Alleged Cause of Action

25. In answer to paragraph 25 of the Complaint, Defendant repeats and realleges the preceding paragraphs as if fully set forth herein.

26. In answer to paragraph 26 of the Complaint, Defendant denies the allegations therein.

27. In answer to paragraph 27 of the Complaint, Defendant denies the allegations therein.

28. In answer to paragraph 28 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Fourth Alleged Cause of Action

29. In answer to paragraph 29 of the Complaint, Defendant repeats and realleges the preceding paragraphs as if fully set forth herein.

30. In answer to paragraph 30 of the Complaint, Defendant denies the allegations therein.

31. In answer to paragraph 31 of the Complaint, Defendant denies the allegations therein.

32. In answer to paragraph 32 of the Complaint, Defendant denies the allegations therein.

33. In answer to paragraph 33 of the Complaint, Defendant admits that it does not use the cheapoair.com domain name in connection with any offering of any goods or services, but denies the remainder of the allegations therein.

34. In answer to paragraph 34 of the Complaint, Defendant denies the allegations therein.

35. In answer to paragraph 35 of the Complaint, Defendant denies the allegations therein.

36. In answer to paragraph 36 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Fifth Alleged Cause of Action

37. In answer to paragraph 37 of the Complaint, Defendant repeats and realleges the preceding paragraphs as if fully set forth herein.

38. In answer to paragraph 38 of the Complaint, Defendant denies the allegations therein.

39. In answer to paragraph 39 of the Complaint, Defendant denies the allegations therein.

40. In answer to paragraph 40 of the Complaint, Defendant denies the allegations therein.

41. In answer to paragraph 41 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Sixth Alleged Cause of Action

42. In answer to paragraph 42 of the Complaint, Defendant repeats and realleges the preceding paragraphs as if fully set forth herein.

43. In answer to paragraph 43 of the Complaint, Defendant denies the allegations therein.

44. In answer to paragraph 44 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Seventh Alleged Cause of Action

45. In answer to paragraph 45 of the Complaint, Defendant repeats and realleges the preceding paragraphs as if fully set forth herein.

46. In answer to paragraph 46 of the Complaint, Defendant denies the allegations therein.

47. In answer to paragraph 47 of the Complaint Defendant denies the allegations therein.

48. In answer to paragraph 48 of the Complaint, Defendant denies the allegations therein.

49. In answer to paragraph 49 of the Complaint, Defendant denies the allegations therein.

Plaintiff's Eighth Alleged Cause of Action

50. In answer to paragraph 50 of the Complaint, Defendant denies the allegations therein.

51. In answer to paragraph 51 of the Complaint, Defendant denies the allegations therein.

52. In answer to paragraph 52 of the Complaint, Defendant denies the allegations therein.

Jury Demand

53. In answer to paragraph 53 of the Complaint, Defendant responds that the allegations contained therein are moot since the parties consented to a non-jury trial at the July 2, 2008 Court conference.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's claims are barred, in whole or in part, because Plaintiff does not possess or own any trademark proprietary right cognizable at law with respect to the name CHEAPOAIR.

2. Plaintiff failed to obtain Federal Trademark Registration for the name CHEAPOAIR or the slogan CHEAPOAIR.COM THE ONLY WAY TO GO.

3. Upon information and belief, the term CHEAPOAIR.COM as set forth in Plaintiff's Trademark Application Serial No. 78/740,147 has been refused registration by the U.S. Patent and Trademark Office on the grounds that it is likely to cause confusion with the existing U.S. Registration No. 28/90981 ("CHEAPAIR INC.").

4. Plaintiff use of the term CHEAPOAIR.COM is not distinctive and cannot acquire secondary meaning in view of the existing registration for CHEAPAIR INC.

5. Defendant cannot be an infringer of a term in which Plaintiff cannot acquire rights.

SECOND AFFIRMATIVE DEFENSE

6. Plaintiff's claims set forth in the Complaint are barred on the grounds that Defendant's activities do not result in a likelihood of confusion, dilution or in any deception or other harm with respect to the public or Plaintiff's alleged rights.

THIRD AFFIRMATIVE DEFENSE

7. Plaintiff's claims set forth in the Complaint are barred on the grounds that Defendant's activities constitute fair use of the term CHEAPOAIR.

FOURTH AFFIRMATIVE DEFENSE

8. Defendant does not use the slogan "CHEAPOAIR.COM THE ONLY WAY TO GO!!," as set forth in Plaintiff's Trademark Application Serial No. 77/422,393.

FIFTH AFFIRMATIVE DEFENSE

9. Plaintiff's claim for monetary damages is inflated, unsupportable, unreasonable and in violation of the Federal Rules of Civil Procedure.

SIXTH AFFIRMATIVE DEFENSE

10. Defendant is a provider of an interactive computer service within the meaning of the Communications Decency Act ("CDA"), 47 U.S.C § 230.


11. Plaintiff's defamation claims set forth as the Eighth Alleged Cause of Action are barred by the CDA, 47 U.S.C § 230.

WHEREFORE, Defendant requests that:

- (a) the Complaint be dismissed in its entirety with prejudice;
- (b) Plaintiff take nothing by way of its Complaint;
- (c) Defendant be awarded its costs and attorneys fees in defending this civil action; and
- (d) the Court grant such other and further relief as this Court deems just, equitable and proper.

Dated: August 18, 2008
New York, New York

OPINION CORP., by its attorneys

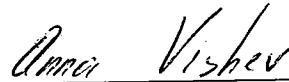


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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing **ANSWER TO COMPLAINT** was served upon counsel for Plaintiff by ECF and First Class mail, postage prepaid, on this 18th day of August, 2008, addressed as follows:

Tedd Kessler, Esq.
Law Office of Tedd Kessler, P.C.
302 Fifth Avenue, 8th Floor
New York, NY 10001

A handwritten signature in cursive script, reading "Anna Vishev", is written over a horizontal line.

Anna Vishev